

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
A La Carte and Themed Tier Programming	)	MB Docket No. 04-207
and Pricing Options for Programming	)	
Distribution on Cable Television and Direct	)	
Broadcast Satellite Systems		

**REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in the above-noted proceeding.<sup>1</sup> OPASTCO is a national trade association representing over 560 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

Video services are an increasingly important aspect of OPASTCO members' service offerings. Half of OPASTCO members operate small cable television companies in their rural service areas. Often these communities are not lucrative enough to attract larger providers. Other members offer video services via twisted-pair copper wire in

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<sup>1</sup>*Comment Requested On A La Carte And Themed Tier Programming And Pricing Options For Programming Distribution On Cable Television And Direct Broadcast Satellite Systems*, MB Docket No.

their service area, and/or in neighboring territories where they have overbuilt facilities in order to provide superior service to consumers. Some OPASTCO members have even deployed fiber to the home in an effort to bring an array of high-speed and advanced voice, video and data services to consumers.

As the National Telecommunications Cooperative Association (NTCA) noted in their initial comments,<sup>2</sup> the delivery of video services by small rural telephone companies helps achieve the goals of section 706 of the Telecommunications Act of 1996 (1996 Act, the Act). This section of the Act seeks to remove barriers to investment in infrastructure in order to encourage the deployment of advanced services in all areas of the nation. A recent OPASTCO survey showed that broadband penetration rates rose when other services, such as video, were bundled along with advanced services.<sup>3</sup> Therefore, the provision of video services by rural telephone companies, when bundled with advanced services, encourages investment in the infrastructure necessary to deploy advanced services to more consumers.

OPASTCO agrees with commenters asserting that small carriers should have the flexibility to offer program choices based on local market conditions. Small carriers are often forced to provide unwanted channels in certain tiers. Whether these restrictive practices are applied through the retransmission consent process or through the threat of withholding vital programming, the effect impedes entry into the market, increases costs, and limits consumer choice. Small carriers also appear to be subject to discriminatory

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04-207, Public Notice, DA 04-1454 (rel. May 25, 2004) (Public Notice).

<sup>2</sup> NTCA, p. 5.

<sup>3</sup> OPASTCO Comments, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54, Notice of Inquiry, FCC 04-55 (fil. May 10, 2004), pp. 4, 9-10.

pricing that favors larger carriers, although direct comparisons are difficult to make due to required non-disclosure agreements.

## **II. COMPANIES SERVING SMALL MARKETS SHOULD HAVE THE FLEXIBILITY TO OFFER PROGRAMMING PACKAGES THAT MATCH THE DEMANDS OF THEIR CUSTOMERS**

Programming tiers that work in large urban markets may not match the needs of consumers in sparsely populated rural areas, where the per-customer costs of providing video services are much higher. OPASTCO agrees with those commenters who assert that small carriers should have sufficient flexibility to offer programming in a manner that best suits the needs of their consumers.<sup>4</sup> While the offering of programming on an “a la carte” basis should not be mandated due to the costs it can impose on small providers,<sup>5</sup> carriers should have the option to make “a la carte” programming available, as well as various flexible tiers, as warranted by local market conditions.

## **III. RETRANSMISSION CONSENT PRACTICES AND DISCRIMINATORY PRICING FOR RURAL MARKETS RAISE COSTS AND IMPEDE MARKET ENTRY**

The Public Notice asked how the retransmission consent process is used by broadcast networks to expand carriage of affiliated programming, and the effect of this process on consumers.<sup>6</sup> Several commenters observed that the retransmission consent process requires small video service providers to include additional channels in basic tiers, which results in fewer service options and higher prices for consumers.<sup>7</sup>

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<sup>4</sup> American Cable Association (ACA), pp. 6-7, 23-28, 48-49; Broadband Service Providers Association (BSPA), pp. 6, 11-13; Rural Telephone Companies (RTCs), pp. 4, 13.

<sup>5</sup> TelAlaska, pp. 2-3.

<sup>6</sup> Public Notice, p. 2.

<sup>7</sup> ACA, pp. 30-37; NTCA, pp. 3-4; Pioneer Telephone Association (Pioneer), pp. 5-7; RTCs, pp. 7-11.

OPASTCO has also noted this problem previously.<sup>8</sup> Practices which require small carriers to carry channels that are not wanted by their customers, or forces them to place less-popular channels in certain tiers, prevents small carriers from crafting tiers that match the demands of their individual markets.

OPASTCO appreciates that the Commission has specifically asked about the effects of programming costs in rural markets,<sup>9</sup> as these costs affect the ability of rural carriers to provide a variety of services. Several commenters note that small carriers serving rural markets may face discriminatory pricing for programming.<sup>10</sup> However, direct comparisons are difficult to make due to non-disclosure provisions that programmers require small service providers to agree to in order to obtain programming.<sup>11</sup> Obviously, if rural carriers, who already face higher per-customer costs due to sparsely populated service areas, must pay more for programming than their larger counterparts, they will experience increased difficulty in providing video services to rural consumers.

#### **IV. CONCLUSION**

Rural telephone companies are actively offering video services to consumers, and are increasingly using diverse technologies to do so. The entry of rural telephone companies into the video market leads to more consumer choice, and when bundled with other services, enhances the deployment of broadband. However, restrictive practices such as forced carriage of unwanted channels, forced inclusion of channels in certain

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<sup>8</sup> OPASTCO Reply Comments, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, Notice of Inquiry, FCC 03-185 (fil. Sept. 26, 2003), pp. 3-4.

<sup>9</sup> Public Notice, pp. 2-3.

<sup>10</sup> ACA, pp. 3-4; NTCA, pp. 4-5; Pioneer, pp. 8-9.

tiers, mandatory nondisclosure provisions, and unequal treatment by content providers all serve as barriers to rural telephone companies' efforts to provide video services to their communities.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION  
AND ADVANCEMENT OF SMALL  
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<sup>11</sup> ACA, pp. 8-9; NTCA, p. 3; Pioneer, pp. 5, 8; RTC, pp. 7, 10.

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 13th day of August, 2004, to those listed on the attached sheet.

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